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obviates all difficulty. It then becomes merely a matter of the performance of a contract. In all of these cases, both where there is held to be an implied duty and where there is an express agreement, it is settled that the master performs the duty by securing competent medical aid, and is not responsible for negligence or malpractice on the part of a physician hired to attend the injured party, unless his general reputation is so bad that the law imputes knowledge of it to the master.[11]

WAIVER OF NOTICE OF CLAIM REQUIRED BY SHIPPING CONTRACT.—The modern doctrine which is generally accepted is that a common carrier may by contract limit his common-law liability, except for damage or loss resulting from negligence or positive wrong-doing.[1] These contracts between carrier and shipper often take the form of an agreement upon a certain maximum amount which shall be the limit of the carrier's liability in case of loss or damage. Still more frequently there is found in bills of lading and shipping contracts a provision that written notice of any claim for the loss of, or damage to, the goods shall be given to the agent of the carrier within some specified time, such as thirty, or ninety days, and that unless such notice is given there shall be no liability on the part of the carrier. Such a stipulation is held to be valid where the conditions imposed are reasonable.[2] But they are held not to apply where the loss is due to negligence or actual misconduct. The theory upon which such contracts are made is not far to seek. This provision is a kind of statute of limitations imposed by contract. It gives the carrier an opportunity to investigate before all the evidence is destroyed and while the circumstances are fresh in the minds of those handling the shipment. On the whole, it may be said that the courts have been very liberal in their construction of what is reasonable, holding as such almost any practicable requirement fully and fairly entered into by the parties.

But a question which has vexed the courts probably even more than the validity of such contracts, or the reasonableness of specific ones, is the question of the waiver by the carrier of the performance of these stipulations as to notice of claims. The cases in which the question of a valid waiver arises easily divide themselves into two classes: (1) those where, within the specified time, the carrier

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[11] Atlantic C. L. R. R. Co. *v.* Whitney, 62 Fla. 124, 56 South. 937; Guy *v.* Lanark Fuel Co. (W. Va.), 79 S. E. 941; Wells *v.* Ferrybaker Lumber Co., 57 Wash. 658, 107 Pac. 869; Simon *v.* Hamilton Logging Co., 76 Wash. 370, 136 Pac. 361.

[1] See Murphy *v.* Wells-Fargo & Co., 99 Minn. 230, 108 N. W. 1070, and cases collected there.

[2] Southern Exp. Co. *v.* Caldwell, 21 Wall. 264, 22 Law Ed. 556; St. L. & S. F. R. Co. *v.* Phillips, 17 Okla. 264, 187 Pac. 470; U. S. Exp. Co. *v.* Harris, 51 Ind. 127. What is a reasonable time is a question of law for the court. Browning *v.* Railroad Co., 2 Daly (N. Y.) 117.

accepts without objection, notice which is not in the proper form; (2) those cases where the shipper makes no move to give notice, or in any way live up to the provisions, within the specified time. In the first class of cases it is evident that the principles of equitable estoppel often enter. The action of the carrier in accepting a partial compliance without objection and apparently in full satisfaction, causes the other party to let slip, without apprehension, the opportunity of carrying out the provisions strictly. Thus, where a shipping contract stipulates for written notice of any claim for loss or damage to be filed within a certain time (sixty days) after the shipment should arrive, and within that time the carrier accepts verbal notice without objecting to the form and treats the claim as pending, it is held that the carrier thereby waives benefit of such conditions.[3] It would clearly be inequitable to allow the carrier later to set up this failure, and the law estops him from so doing. The cases all agree that such circumstances are sufficient to uphold a waiver by the carrier.[4]

But a different problem is presented in the second case, where the other party makes no move to comply with the stipulations and, after the time has expired, files his claim which is accepted and investigated without objection but later refused on grounds other than the non-performance of the conditions in the contract. Again, in this case there are two conceivable sets of circumstances which might arise; namely, first, where there can be raised some kind of estoppel against the carrier, or where consideration for waiver can be shown; and, second, where no estoppel can be raised, nor any consideration shown. There is little or no conflict on the first of these two cases, most of the courts supporting a waiver either where an estoppel can be raised, or where some kind of consideration can be shown.[5] It is the second case which causes the difficulty. There arises the mooted question of whether a waiver can be predicated upon anything other than estoppel, or valid contract, supported by consideration. In the cases arising out of these shipping contracts few courts are so strict in their requisites for waiver. The Virginia courts are almost alone in holding that to establish a waiver the conduct of the carrier in receiving the claim after the expiration of the stated period must absolutely have caused the other party to change his position so that he occupies a more disadvantageous

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[3] Wabash R. Co. *v.* Brown, 152 Ill. 484, 39 N. E. 273. An agent is not bound to recognize an oral demand, but if he does it amounts to waiver. Hill *v.* Telegraph Co., 85 Ga. 425, 11 S. E. 974.

[4] Lasky *v.* Southern Exp. Co., 92 Miss. 268, 45 So. 869; Southern Exp. Co. *v.* Stevenson, 89 Miss. 233, 42 So. 670; C. R. I. & G. Ry. Co. *v.* Linger (Tex.), 156 S. W. 298; Carter *v.* Southern Ry. Co., 3 Ga. App. 34, 59 S. E. 209; U. S. Watch Case Co. *v.* Southern Exp. Co., 120 N. C. 351, 27 S. E. 74; C. & A. R. Co. *v.* Grimes, 71 Ill. App. 397; Rice *v.* Kan. P. Ry. Co., 63 Mo. 314.

[5] St. L. S. W. R. Co. *v.* Grayson, 89 Ark. 154, 115 S. W. 933; Wallace *v.* L. S. & M. S. Ry. Co., 133 Mich. 633, 95 N. W. 750. See also Atlantic C. L. R. Co. *v.* Bryan, 109 Va. 523, 65 S. E. 30; Old Dominion S. S. Co. *v.* Flanary, 111 Va. 816, 69 S. E. 1107.

position than he would otherwise have occupied.[6] A majority of the courts establish a waiver where one in the possession of any right, whether conferred by law or contract, and with full knowledge of the material facts, does, or forbears the doing of, something inconsistent with the existence of the right, and of his intention to rely on it; by such conduct he is precluded from claiming anything by reason of it afterwards.[7] Thus, in the recent case of Cheney *v.* N. Y. C. & H. R. R. Co., 85 Misc. Rep. 157, 148 N. Y. Supp. 108, it was held that a provision of a shipping contract relieving the carrier from liability for loss unless a written claim be made within four months after a reasonable time for delivery, is waived where the carrier, after the expiration of the four-month period, at the consignor's suggestion, undertakes to trace the goods and invite the presentation of a claim for loss under the contract. This decision follows a large number of others on the same, or similar, facts, and is certainly in line with the majority holding.

On the whole, it would seem to be in accord with principles of right and justice that the courts be quick to recognize a waiver in these cases. By not filing notice strictly in compliance with the contract a shipper renders himself liable to forfeit a right which he would otherwise have. It is a familiar saying that forfeitures are not favored in the law. Since these provisions are entirely for the benefit of the carrier it is always his privilege to waive the benefit of such provisions when the shipper fails to fulfill the conditions. The carrier has these rights by virtue of the contract, and if he intends to exercise them he should not act in a manner inconsistent with such intention. It has been said that waiver is a technical doctrine introduced and applied by the courts for the purpose of defeating forfeitures and of preventing a person's taking inconsistent positions and gaining thereby through the aid of the courts.[8]

THE POWER OF MUNICIPAL CORPORATION TO REGULATE BILLBOARDS.—The police power is a natural attribute of all civilized sovereignties. It is co-extensive with self-protection, every sovereignty having the inherent power to pass all laws necessary to preserve and promote the security, order, health, and morals of its

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[6] Atlantic C. L. R. Co. *v.* Bryan, *supra;* Old Dominion S. S. Co. *v.* Flanary, *supra.*

[7] Isham *v.* Erie R. Co., 191 N. Y. 547, 85 N. E. 1111; Post *v.* A. C. L. R. Co., 138 Ga. 763, 76 S. E. 45; Carter *v.* Southern Ry. Co., *supra;* L. & N. R. R. Co. *v.* Shepherd (Ala. App.), 61 So. 14; Rice *v.* Kan. P. Ry. Co., *supra;* Ingwersen *v.* St. L. & H. R. Co., 116 Mo. App. 139, 92 S. W. 357; Banks *v.* Penna. R. Co., 111 Minn. 48, 126 N. W. 410; Hudson *v.* North. Pac. Ry. Co., 92 Iowa 231, 60 N. W. 608, 54 Am. St. Rep. 550. See also Hutchinson, Carriers (2nd Ed.) § 259; Bishop, Contracts, § 792; 6 Cyc. 509, and cases cited.

[8] 40 Cyc. 254. See also Pabst Brewing Co. *v.* City of Milwaukee, 126 Wis. 110, 105 N. W. 563.